1947

File No. O. Contract/47

Legal Depart

A **BRANCH**

Subject:—

Opinions under the

Indian Contract Act 187

43
E

162-A

File No. O Contract/47

C O N T E N T S

Legal Department Volume No. O Contract /1947

Sr. No.	R.I. / O. No.	Subject	Pages
		Opinions under the Indian Contract Act, 1872.	
	O. Contract/1947		
1.	9794 / 7-11-46 — 405/ / 3-1-47	Re: Granting of certain land by Government on lease to the trustees of the Beach Candy Swimming Bath.	1-8
2.	4785 / 19-4-47 — 4664 / 7-5-47	Re: Dismissal of a person who was trained in certain subject at Governmet cost on the express conditionin writing that he is liable to serve Governmet for period of 5 years. Recovery of the expenses incurred by Government for the training of -- Quewtion what legal action can be taken for recovery of the amount.	9-12
3.	4781 / 10-5-47	Re: Tenders called by the Liaison officer, Military Grass Supply, Secretariat, Bombay, for supply of grass to the Military Farm at Belgaum. Offer by one contractor to supply 25 lakh lbs. of grass. Telegram to the- from the Liaison Officer whichreads as follows:- "Can't you supply fifty lakh at twenty one as per your registered letter. Were reply" Question whether the above telegram can be treated as concluded agreement and whether the contractor is entitled for compensation in the event the tender is rejected subsequently	13-16
4.	1544 / 10-2-47 — 4908 / 14-5-47	Re: Tenders invited by Govt. for supply of grass at Viramgaon and Baragadi Acceptance of -- Questions (1) Whether the contractor was bound to stock and store the grass at his risk and cost at Voraamgaon under the conditions of contract and whether he would be entitled to be paid at the rate fixed; (2) Whether the contractor is entitled to be paid for grass which was found deficinet at the destination when the same was weighed, and	P.T.O.

Sr. No.	R. I. / O.No.		Subject	Pages.
4.			(3) whether the Government is responsible for storage expenses of grass lying at Hubatpur in the Bajana State	17-24
5.		4330 9-9-47	Re:Contract entered into by Governmet with a firm of two partners for the supply of metal. Request from one partner to allow him sign the contract stating that the other partner has served his connections. Production of letter signed by the other partner in support of the above request. Intimation from the other partner stating that he has not served connections with the firm and the letter produced by him partner is a forged letter. Question as to whom the payment of the bills in respect of the contract may be made.	25-28
6.	2839 10-3-47	5061 17-5-47	Re: Seeling of plots by Govt. to various persons. Request from the purchasers to Government to construct roads in order to facilitate building constructions. Questions whether there is any legal obligationon Goct. to construct roads.	29-34
7.	4850 21-4-47	6056 10-6-47	Question whether in the absence of a valid contract within the meaning of section 175(3) of the Government of India Act, 1935 the deposit and other sums due to the contractor can be forfeited for breach of contract on the part of the contractor.	35-38
8.	4419 11-4-47	4641 6-5-47	Re: Contract given by the Collector to the Furniture Contractor for supply of furniture. Question regarding relative liabilities of the Collector and the furniture contractor regarding payment of the Bills of Hardware articles.	39-46
9.	3008 13-3-47	4923 14-5-47	Re: Contract for supply of meat fresh, halal and live animals at Deolali. Question whether or not the the contract became binding by acquiescence on the part of the contractors and whether the terms of the contract would be enforced .	47-60

Sr..No.	R.I.	O,No.	Subject	Pages
10.	1954 18-2-47		Re: Contract for supply of grass Damages claimed by the contractor on account of grass spoiled by rains as he could not despatch the same for want of wagans. Questions (1) Whether the claim for domages of the contractor is tenable. (2) Whether the excess amount paid to contractor can be deducted from the amount due to him from Government.	61-64
11.	3628 26-3-47	4700 7-5-47	Question whether in the absence of valid contract within the meaning of Sec. 175(3) of the Government of India Act, 1935 the deposit and other money due to contractor can be forfeited for breach of contract on the part of the Contractor	65-68
12.	1390 6-2-47	4768 9-5-47	Question whether in the absence of a valid contract within the meaning of Sec. 175 (3) of the Govt. of India Act, 1935, the deposit money due to contractor can be forfeited for breach of contract.	69-72
13.	10401 3-9-47	10452 31-10-47	Re: R.L.A's opinion No. 8326 dt 22-11-46. Calim in respect of Shortages in Gur consignments.	73-76
14.		9858 13-10-47	Re: Contract for sale of grass. Question whether in the absence of a valid contract withing the meaning of Sec. 175(3) of the Government of India Act, 1935, the contractor can claim compensation from Government on account of any discrepancy .	77-80
15.		8826 30-8-47	Question whether in the absence of a valid contract within the meaning of Sec. 175(3) of the Government of India Act, 1935, the deposit money due to the contractor can be for feited for breach of contract.	81-82
16.		9154 12-9-47	Question whether the amount of deposit paid by the contractor shoul dberefund-ed to the contractor himself or to his ac redited authoriz-ed representatives appointed by him. Indian Contract Act, 1872, Sec. 201,204,297 and 208	83-86

Mjr/16/6

P.T.O.

Sr. No.	R.I. / O. No.		Subject	Pages
17	8805 23-7-47	8575 23-8-47	Re: Contract for the supply of fresh mutton. Question whether the contractors are entitled for enhanced rates as they suffered heavy loss due to circumstances which were beyond their control (Copies not taken)	87-92
18.	8017 9-7-47	7158 11-7-47	Re: Contract given to a firm of two partners. Question whether in view of the fact that the tender is signed by both the partners and the contract is signed by only one partner payment should or should not be made to the partner who alonehas signed the contract. (Copies not taken).	93-94
19.		7941 1-8-47		95-100
20		7829 29-7-47	Question whether Government are under any liability to indemnify the agent for the liabilities incurred by the latter will in a large measure depend upon the true contruction of their agreements.	101-106
21	7660 28-6-47 8425 15-7-47	6953 7-7-47 9031 5-9-47	Re: Contract for supply of Mutton. Question whether the contractor is entitled for compensation for loss of his sheep and goats kept in the pens during his contract period.	107-116
22	9199 1-8-47	8383 14-8-47	Re: Tenders for supply of 2,60,000 lbs. of meat. mistake in the schedule attached to the contract in respect offigure viz. 1,60,000 instead of 2,60,000 which is the correct figure. Question whether even if the contractor refuses to amend the figure 1,60,000 lbs. appearing in the schedule attached tc the contract as to 2,60,000 the contract can be enforced to the extent of the latter quantity.	117-124
23	10140 27-8.47	9669 1-10-47	Question regarding refumd of overpayment made tc certain firm. Question as to what legal action can be taken in the matter (Copies not taken)	125-128

contd--- 5---

Sr. No.	R.I.	/ S. No.	Subject	Pages.
24.	13944 21-11-47	11424 29-12-47	Re: Recovery of balance due when amount was payable in equated instalments. (Pl. also see R.L.A's No. 6625/28-9-46 File O.Contract/46) (Copies not taken)	129-132
25	13597 10-11-47	13186 20-12-47	Re: Selling of plots by Govt. to certain persons. Question regarding Govt's liability to construct roads (Pl. also see R.L.A's No 5051 dt. 17-5-47)	133-136
26.		10392 30-10-47	Re: Advance required to be paid by the charcoal contractors question whether three is any legal objection to the new charcoal being taken as security for the old outstandings as well as the fresh advances	137-140
27.	14235 29-11-47	13548 31-12-47	Re: Shrinkage in the grain due to negligence and carelessness of the purchase officer. Question whether the recovery on account of shrinkage can be made on the band executed by the purchase officer and whether a civil necessary	141-152

Mjr/16/6
2 Cs.

10
6/11

Section 10 of the Indian Contract Act provides:-

"All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents".

Under section 175(3) of the Government of India Act, 1935 all contracts made in exercise of the executive authority of a Province shall be expressed to be made by the Governor of the Province and all contracts and assurances of the property made in exercise of that authority shall be executed on behalf of the Governor by such person and in such manner as he may direct or authorise. The terms proposed by the Collector in his letter No. L.N.D. 1234, dated 25-10-1943 relate to the property and in the absence of any agreement executed by or on behalf of the Governor that letter of the Collector can constitute no valid agreement. Consequently Government would not be bound by the Collector's letter and no liability of Government to allow the erection of a building as specified therein would arise.

Even assuming that a legal and valid contract can be spelt from correspondence the Collector's letter clearly contemplates a supplimentary deed embodying those terms. "If the documents or letters relied on as constituting a contract contemplate the

execution of a further contract between the parties, it is a questionof construction whether the execution of a further contract was intended as a condition or term of the bargain or, whether it was a mere expression of the desire of the parties as to the manner in which the transaction already agreed to would in fact go through. In the former case there is no concluded or enforceable contract until the condition is fulfilled i.e. until the formal agreement has been executed. In the latter case, there is a binding contract and the reference to the mere formal document may be ignored" (See Currimbhoy v. Crest, 35 B.L.R.) 223). In view of section 175(3) of the Government of India Act, 1935 the execution of a document was intended as a conditionor term of the bargain, Government would not therefore in any case be bound by the terms contained in the Collector's letter dated 25-10-1943

The next question for consideration is whether Government can withhold its consent to the Breach Candy Swimming Bath Trust to sub-lease the land to the Bombay European Hospital Trust for purposes of a hospital. Subclause (e) of clause 2 of the lease between Government and the Breach Candy Swimming Bath Trust provides:-

> "Not to assign, part with or sub-let the demised premises or any part thereof without the previous consent in writing of the Collector on behalf of the lessor which permission shall not be unreasonably withheld."

Lessor's refusal may be justified if the proposed assignee is objectionable or if the proposed user.

user is different from that for which the property was let (see Hill's Law of Landlord and Tenant pages 485-88). The Bombay European Hospital Trust to which the land is proposed to be sub-let desires to use if for erecting a hospital open to the Europeans obly. The user of the land for such a purpose appears to be different from that for which the land was leased to Breach Candy Swimming Bath Trust. In the circumstance it appears competent for Government to withhold its consent to the sub-lease.

Sd/. D.V.Vyas

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 405, dated the 13th January 1947.

Mjr/15/6

4 Cs.

A.L.R.

On dismissing Mr. Mane from Govt. service Govt. wouldbe entitled to revocer from him through Court the cost of his training

Sd/- R.T.Katarki
5/5

R.L.A.

Sd/- P.M.Lad
5/5

L.R. to R.D. No. 4664 dated 7-5-47

Mjr/15/6
4 Cs.

Office of the R.L.A.

In accordance with the normal practive Mr. Kokitkar had got his name registered in the office of the Assistant Director, Military Dairy Farm, Bangalore, on 26-10-1944. On 13-11-1944 he sent an application to the Divisional Forest Officer, North Thana, Nasik, stating that he would supply 50 lakh lbs. of grass to the Military Farm at Belgaum at Rs. 21 per 1000 lbs. On 21-11-1944 the Liaison Officer, Military Grass xxxSupply, Secretariat, Bombay, who was the same official as the Divisional Forest Officer, North Thana, Nasik (Mr. J.A.Singh) called for tenders for supply of grass to the Military Farm at Belgaum. Mr. Kokitkar's was one of the five tenders received offering 25 lakh lbs. of grass at Rs. 21 per 1000 lbs. After receipt of this tender, on the 26th Of November Mr. Singh sent a wire to Mr. Kokitkar which reads as follows:-

> "Can't you supply fifty lakh at twenty open as per your registered letter. Wire reply."

Mr. Kokitkar replied the next day:-

> "Received wire willing to supply fifty lakh lbs. hay at twenty one as per my registered letter."

No reply was sent to this wire; and on 1-12-1944 Mr,. Kokitkar sent a reminder telegram requesting that he should be informed whether his telegram dated 27th of November was confirmed or not. It seems that as all the contractors started making allegations against one another, all the tenders were rejected and they were informed accordingly on 5-12-1944 including Mr. Kokitkar.

2. On these facts it is not possible to hold that there was a concluded agreement. Ordinarily.

an offer lapses by rejection or a counter offer. It cannot be said that the telegram sent by Mr. Singh on the 26th of Novem er was counter-offer. In the case of Stevenson, Jaques, & Co. v. McLean (1880, 5 Queen's Bench Division p. 346), a telegram was sent to the effect: "Please wire whether you would accept forty for delivery over two months, or if not, longest limit you could give." Hush J. held that the form of the telegram was one of inquiry, that there was no counter proposal, and that there was nothing specified by way of offer or rejection but a mere inquiry . In this case the telegram has to be construed on the background of the previous intimation by Mr. Kokitkar t at he wouldsupply 50 lakh lbs. of grass. On that background, and in the form in which it is couched, it wouldbe obvious that the telegram was of the nature of an inquiry and not of a counter proposal which Mr. Kokitkar couldbe said to have accepted by his reply expressing his willingness so as to turn it into a concluded agreement. In these circumstances it must be held that there was no concluded agreement. Even assuming that such agreement can be spelt from the inquiry made by Mr. Singh and the reply given by Mr. Kokitkar, the inquiry not being made by Mr. Singh on behalf of the Governor in compliance with the provisions of section 175(3) of the Government of India Act, 1935, the agreement is void and unenforceable. Government wouldnot in any event be liable to pay damages for the breach of the contract.

3. If Mr. Kokitkar can claim no compensation from Government for the breach of the agreement.

Much less could his assignee Mr. Astekar do so. The view taken by R.C.D. is correct

Sd/- P.M.Lad

10/5

o.c.

Remembrancer of Legal Affairs.

U.R. to R. .D. No. 4781, dated the 10th May 1947

Hjr/15/6

4 Cs.

Office of the H.L.A.

It appears from the letters addressed to H.M. (1) that Mr. Mehta Pitambardas claims relief in respect of the following:-

(a) Damages for non-fulfilment of the contract by Government.

(b) Deductions made in the bills for grass supplied to Bombay and Poona.

(c) Non-payment of 30% in advance for the stock of grass bales which were weighed by Government Inspector but taken delivery of.

(d) Charges for protecting grass bales.

Mr. Mehta Pitambarda's offer to supply 15 lakh lbs. of grass at the rate of Rs. 28 per 1000 lbs f.o.r. at Viramgaon was accepted by Mr. Singh, Liason Officer, Military Grass Supply, subject to the following conditions:-

(i) The grass shouldbe of current season's growth and of good quality etc.

(ii) The weight of each bale should notbe less than 200 lbs.

(iii) The bale will be weighed on spring balance. The weight recorded by the officer will be final and binding on you. Should you have any compláint on that score, you shouldinform me when the matter will be looked into.

(iv) You should supply the whole quantity by 31-3-1946 in accordance with the despatching instructions which will be issued to you from time to time.

(v) You will be paid you bills etc.

(vi) You will supply necessary labour.

(vii) The passed bales will be loaded into the wagons at your own expense as and when wagons are supplied etc.

Mjr/15/6
4 Cs.

P.T.O.

(viii) You will protect the grass at you own cost and risk, should it remain undespatched after the contract period on account of wagon difficulties.

(ix) You will be called upon to sign the agreement in this office in due course.

(v) The amount of Rs. 2000 paid by you is taken towards deposit.

No agreement evidencing the contract was ultimately passed. The letter ofacceptance at page 28 of the Finance Department File IV D Branch has not been signed by Mr. Singh as indicating acceptance on behalf of the Governor or the Governor General. There is therefore no valid agreement conforming to the provisions of section 175(3) of the Government of India Act, 1935. The agreement being void, Mr. Mehta Pitamber wouldnot be entitled to claim damages for the breach of the contract. In fact there appears to be no breach of contract since whatever grass he could supply from Viramgaon under the contract was accepted by Government. See the District Magistrate's report that Mr. Mehta Pitambardas had no grass at Viramgaon. Government was not bound to accept grass stocked by him at Halbatpur. His claims (a) and (d) are therefore clearly untenable. His claim (c) is not substantial for instead of paying 30% in advance he might have been paid the whole amount after the supply was received. He appears to be entitled to relief in respect of his claim (b). Although an agreement is void the advantage received thereunder must be restored (see section 65 of the Indan Contract Act). Mr. Mehta Pitambardas alleges that he actually idspatched 3,17,457, lbs. of grass and the disposal of this grass was arranged through a broker in consultation with the Milk Commissioner. The broker found that the actual weight of grass was 2,64,440, lbs

and not 3,17,457. The grass received in Bombay was disposed of by the Broker at the rate of Rs.25 per 1000 lbs. It was decided by Government that the actual price realised in Bombay shouldbe paid to Mr. Mehta. He however contends that he should be paid at the contract rate of Rs. 28 per 1000 lbs . The Liason Officer contends that the grass sent to Bombay was of inferior quality and consequently Mr. Mehta cannot be paid according to the contract rate. It appears from the memorandum at page 51 of the Finance Department File that a Hay Inspector was appointed to inspect and weigh grass before it was despatched. The grass despatched by Mr. Mehta. Pitambardas must have been presumably so inspected and weighed. If so, unless the short weight and inferior quality of grass supplied by Mr. Mehta Pitambardas could be positively proved by independent and reliable evidence, Government would be liable to pay him for full weight and at the stipulatee rate Government may therefore make further inquiry if necessary and settle his claim in this respect.

Sd/- P.M.Lad

O.C. 13/5/47

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 4903, dated the 14th May 1947.

Mjr/15/6

4 Cs.

Office of the E.L.A.

It appears that tenders were called for for the supply of metal for constructing the South approach of the Old Railway Bridge over the Narbada river at Broach and the tender submitted by Messrs. Jairambhai and Goverdhandas was found to be the lowest. Before the tender was passed and the contract executed one of the parteners of the firm Mr. Goverdhandas produced a letter signed by the other partner Mr. Jairambhai stating that the latter had severed his connection with the firm and that the former was authorised to sign the contract papers. The Superintending Engineer, therefore, permitted the Executive Engineer to change the firm's name from Messrs. Jairambhai and Goverdhandas to Messrs. Goverdhandas and Co., and the contract ~~xpp~~ papers were signed by Mr. Goverdhandas. The work was commenced and an immediate bill of Rs. 5966/- has been submitted by the Deputy Engineer, Broach for audit and payment. In the meantime Mr. Jairambhai has written to the Superintending Engineer, Northern Circle, Bombay, alleging that the letter produced by Mr. Goverdhandas was a forged one and that he was still a partner of the firm and as such had interest in the work. The District Government Pleader, Surat, who was consulted, advised that any one of the following there courses may be followed:-

1. The amount of the bills may be paid to Mr. Goverdhandas on his passing a proper indemnity bond with two sureties;

2. Mr. Goverdhandas may be asked to establish in a Court of Law that Mr. Jairambhai has ceased to be partner;

3. The P.W.D. may itself file an interpleader suit praying for the directions of the Court as to whom the amount should be paid.

Acting on the advice of the District Government Pleader, Surat, the Deputy Engineer in his letter dated 22nd January 1947 has asked Mr. Goverdhandas to establish in a Court of Law that Mr. Jairambhai had ceased to be a partner. The P.W.D. considers th t out of three courses suggested by the District Government Pleader, Surat, the P.T.O.

.. two are safer as compared to the first course.

The R.L.A. is requested to advise on the following three points.

(1). Whether the running account bill for Rs. 5968/- may be passed by the Executive Engineer and the amount adjusted to the debit of the work by credit to deposit as a special case notwithstanding that it is a final bill. If this is not done the amount reserved by the Executive Engineer to cover the debit of the workduring this year will lapse and the charge will remain to be brought to account till the final decision of the dispute between the two partners is reached.

(2) Whether the action taken by the Executive Engineer in his letter dated 11th February 1947 to Mr. Goverdhandas should be approved.

(3) Whether the P.W.D. may itself file an interpleader suit praying the amount of bills to bepaid to whoever is adjudged by the court to be entitled to receive in view of the dispute between the partners.

This is one of the two safer courses suggested by the District Government Pleader, Surat.

Point (1): This involves no legal point and it is for the Administrative Department and the Accountant General to settle.

Point (2) and (3): Since Government has entered into an agreement with Messrs. Goverdhandas and Co., the amounts due thereunder will have to be paid to that firm alone. Mr. Jairambhai no doubt contends that he is still a partner of the firm. Under section 18 of the Indian Partnership Act, 1932, Mr. Goverdhandas can be deemed to be an agent of the firm for the purpose of the business. Consequently assuming the whole firm is still in existence and that the contract entered into between Government and Mr. Goverdhand s can be deemed to be one on behalf of that firm, the payment which Government would make to Mr. Goverdhandas in connection with the contract would

certainly be binding on the firm. Payment to one partner is a good payment to the firm, and by parity of reason a release by one partner binds the firm, because as a debtor may lawfully pay his debt to one of them, he ought also to be able to obtain a discharge upon payment (Pollock and Mulla's Indian Partnership Act, 1932 page 57). There appears, therefore, no legal objection to Government paying the amount to Mr. Goverdhandas, and obtaining discharge from him Government may, however, take an indemnity bond with two sureties from Mr. Goverdhan das before making the payment to him. Since Government has entered into a contract with Mr. Goverdhandas it would be unfair, if not illegal, to ask Mr. Goverdhandas to go to Court to get a declaration that Mr. Jairamdas has ceased to be a partner. Further, there is no reason why Government should file an interpleader suit when under the contract Mr. Goverdhandas is clearly entitled to claim the amount from Government.

Sd/- P.M.Lad

29/4

e.c.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 4330 dated the 29th April 1947

Mjr/15/6

4 Cs.

Office of the R.L.A.

The question whether Government is liable to construct the roads would depend on the terms of offer and acceptance. The offer forms at pp 53 to 67 ante do not appear to provide for Government's liability to construct roads. Prima facie Government would not be legally bound to construct the roads; but in the absence of proper materials it will not be possible for the Remembrancer of Legal Affairs to express any definite opinion. The Revenue Department should scrutinize the terms of each grant and decide Government's liability

Sd/- P.M.Lad

o.c. 16/5

Remembrancer of Legal Affairs.

U.R. to R.D., No. 5061, dated the 17th May 1947

Mjr/15/6

4 Cs.

Office of the R.L.A.

Although there is no regular agreement in conformity with the provisions of section 175(3) of the Government of India Act it appears from the tender, its acceptance, the subsequent correspondence and the part performance of the agreement that the contractors would not be able to dispute the contract. Since the contractors have failed to perform the contract and their inability to transport grass across the two rivers in the jungle and the burning of grass kuran are not valid grounds to justify non-performance of the contract, there appears no objection to forfeiting the deposit of Rs. 200/- The amount of Rs. 248/- on account of deductions at 4 p.c. and the amount of Rs. 1638 on account of deductions at 50 p.c. appear to be part of the price of grass supplied by the contractors and these payments were withheld until the fulfilment of the contract. Consequently these amounts cannot be forfeited but can be appropriated towards the damages which Government has suffered by reason of non-fulfilment of the contract; and the damages should be assessed on the basis of the market rate at the date of the breach of the contract. The question may have to be reviewed in case the contractor goes to a Court of Law on the basis that the contract is void.

Sd/- P.M.Lad

o.c. 18/6

Remembrancer of Legal Affairs.

U.R. to A.R.D.D., No. 6056, dated the 10th June 1947.

Mjr/15/6

4 Cs.

In the absence of any documentary material evidencing the arrangement between the Collector and Mr. Muchandi or the arrangement between the Collector and the Hardware merchants, the relev ant facts, as extracted from the papers seem to be as follwa:- As Mr. Muchandi could not get easily the iron materials needed for the making of the furniture, the contract for supplying which was given to him by the Collector, he requested the Collector in his capacity of District Magistrate to get the iron materials for him from the Hardware merchants at reasonable rates and he said he would pay the bills when they were received (page 157). In placing the order with the Hardware merchants the District Magistrate thus acted as the agent of Mr. Muchandi. The papers do not show that the District Magistrate disclosed to the Hardware merchants the name of his principal Mr. Muchandi or even the existence, as distinguished from the name, of his principal. They appear to have dealt directly with the District Magistrate or the Collector and to have given credit to him. Under section 230 of the Indian Contract Act, a contract that an agent is personally bound shall be presumed where the agent does not disclose the name of his principal. The papers do not contain any material sufficient to rebut the presumption. In I.L.R. 5 Bom 584 it has been held that if the other party knows that the agent is contracting as such, the above presumption does not arise, although at the time of makingthe contract the agent does not disclose the name of the principal, the knowledge being in such a case equivalent to disclosure. In this respect, the existence of means of knowledge is not material except as evidence of actual knowledge (Pollock's Principles of Contract, 10th

... p 102). It is for the Collector to decide whether such knowledge on the part of the Hardware merchants can be proved. Otherwise the ordinary rule will apply viz. that an agent who contracts for an unnamed principal, without expressly contracting as agent, will be personally liable; if an agent does not by words exclude himself from liability, it may be assumed that one who deals with an agent for an unnamed principal expects and is entitled to the liability of the agent. Unless knowledge as stated before on the part of the Hardware merchants can be proved, the Collector & District Magistrate would seem to be liable.

2. But under section 222 of the Indian Contract Act Mr. Muchandi is bound to indemnify the Collector and District Magistrate against the consequences of all lawful acts done by him in exercise of the authority conferred upon him. The authority was to buy the materials at reasonable rates. The Deputy Controller General of Civil Supplies directed that the bills of the Hardware merchants be paid; thus those entrusted with the duty of ensuring that excessive rates are not charged accepted the rates as reasonable; and Mr. Muchandi cannot, therefore, complain that the Collector and District Magistrate exceeded his authority and that the liability was not incurred in the reasonable performance of the agency. The right of indemnity can, therefore, beenforced against Mr. Muchandi; in that respect it is immaterial whether or not the agent proposed to be acting on his principal's behalf, if he was so in fact.

3. If after this legal position is explained to him, Mr. Muchandi declines to pay the Hardware merchants, the Collector& District Magistrate may pay them; if Mr. Muchandi declines to reimburse him the collector

& District Magistrate may commence an actionagainst Mr. Muchandi enforcing the indemnity. In such action he may claim the balance from Mr. Muchandi after deducting the sum in his hand due to Mr. Muchandi as the price of the furniture. The question of a lien under section 221 of theIndian Contract Act does not arise in the present case.

Sd/- P.N.Lad

5/5

o.c.

Remembrancer of Legal Affairs.

U.O. No C.S.D No- 4641 dt. the 6th May 1947

Mjr/15/6

4 Os.

No. 4923

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 14th May 1947 .

To

Major -General,
Commander, Bombay Area,
Colaba, Bombay.

Subject:- Contract for the supply of meat fresh, halal and live animals at Deolali from 1st October 1946 to 31st March 1947.

Sir,

With reference to your letter No. 418/3/ST5Q, dated the 10th March 1947 on the above subject, I have the honour to observe as follows:

In order to convert a proposal into a promise, the acceptance must be absolute and unqualified. (Section 7 of the Indian Contract Act). Otherwise ther can be no concluded contract. In this case, the approval or rejection of tenders rested in general with the Commander, Bombay Area (Clause 12 of the Instructions to Tenderers). But the tender was not in fact approved or accepted by that officer. It was only "recommended for acceptance". and the intimation sent to the tenderer said that formal acceptance notice would be issued to him as soon as it was sanctioned by the competent authority. The competent authority was the G.H.Q. India; and without their sanction there could be non acceptance. This was not a mere reference to the preparation of a formal document which does not prevent a contract, otherwise bin ding, being complete. The contract was not complete; for the competent authority may have declined to sanction the tender, without assigning any reasons. In the case of Secretary of State v. Bhawandas Goverdhandas 40 Bombay Law Reporter, 19 where the Collector made it plain that he was really doing nothing more than indicating that he was prepared to recommend to Government to sanction a lease on the terms finally agreed upon between him and

the defendant, Beammont C.J. was inclined to hold that no contract had even been purported to be made The refore, in the case, negotiations were not concluded: and so long as parties are in negotiation either party may retract. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer; and the acceptance was complete only on 29-11-1946 when the communication of acceptance was put in the course of transmission to the proposer. whereas the revocation was complete on 18-11-1946. There was thus no concluded contract; and there was no question of the performance of the contract by the supply of meat at the schedule rates for two months. it would not be open to rely as constituting acceptance of the proposal. The view taken by the H.Q. Southern Command is correct.

Your obedient servant.

Sd/- P.M.Lad

o.c. 13/5

Remembrancer of Leagl Affairal

Mjr/15/6

4 Cs.

Office of the R.L.A.

The first question for the considerationof the R.L.A. is whether Mr. Manubhai Shah's claim of Rs. 25,000/- for damages is tenable.

Mr. Manubhai claims damages on the ground that as per instructions of the Military authorities he had kept his grass redy for dispatch at Pardi and Dongri and as no wagons were supplied the grass he had bcrught and kept ready for leading into the wagons was speciled by rains whereby he suffered damages. According to the terms of the agreement Mr. Manubhai had agreed to supply grass at the following rail heads namely (1) Dongri (2) Billimoria, (3) Bulsar (4) Pardi, and (5)

(a) Rs.5/- per 1000 lbs. f.o.r. till 10th June 1944 or advant of rains, whichever was earlier.

(b) If thegrass is not removed before the rains, it will be stored in the satisfactory manner at his own cost and the delivery of thes stored grass betaken and the contractor to reveive payment at the rate of Rs.26-12- Oper 1000 lbs.

(c) Any stored grass which remains to b removed by 30-11-1944 willbe taken charge of by the Military and the contractor to reveive payment at the rate of Rs. 26-8-0 per 1000 lbs.

If is therefore apparent that it was the duty of Mr. Manubhai to store grass in a stisfactory manner at his own cost if it was not removed before the rains. Consequently Mr. Manubhai would not be entitled to claim damages for the grass ppoilt by rains and the fact that Government was unable to supply wagons wouldnot absolve Mr. Manubhai from his liability to store the grass at his own cost.

The second question referred to the R.L.A. is whether

excess payment of Rs. 4364/- made to Mr. Manubhai can be deducted from the amount of Rs. 6258/- due to him from Government.

In this connection the L.O. M.G.S. states:- "Mr. Shah continued to supply grass to the Military after 30-11-1944 on f.o.r. basis as he had no stored grass and supplied grass from 1-12-1944 from the new stock with the mutual arrangement with the military. As Mr. Shah supplied grass from new stock he was entitled to receive payment at Rs. 25/- per 1000 lbs. But he was paid Rs. 26-8-0 and Rs. 26-12-0 per 1000 lbs. inadvertently and the excess payment made to him comes to Rs. 4364/-" .

Under section 72 of the Indian Contract Act a to whom money has beenpaid or anything delivered by mistake or under concercion must repay or return it. It is not clear from the aforesaid statement of L.O.M.G.S. how the mistake occurred. If the rate for grass from new stock was settled at Rs. 25/- per lbs. and Mr. Shah was paid a higher rate through inadvertence there appears no objection to recovering the excess payment by deducting it from the amount of Rs. 6258/- due to him from Government. But if the rate was not so settled, the payment would be deemed to be for the price of grass at the rate of Rs. 26-8-0 and Rs. 26-12-0 per 1000 lbs. in which case no mistake can be pleaded and the excess would be irrecoverable .

Sd/- F.N.Lad

O.C. 10/6/47

Remembrancer of Legal Affairs.

U.R. to A.R.D.D., No. 6071, dated th 11th June 1947.

Mjr/16/6

4 Cs.

Office of the R.L.A.

In the present case there is no valid agreement in writing as provided in section 175(3) of the Government of India Act, 1935; nor does the correspondence disclose that the offer made by Messrs. Godse & Co. was accepted by the Milk Commissioner on behalf of the Governor of Bombay. Consequently there appears to be no valid and enforceable agreement. Since Messrs. Godse & Co. have acted upon the agreement and part of the transaction fell through by reason of their default, Government may keep the deposit money. If Messrs. Godse & Co. file a suit for the return of their deposit on the ground of the contract being void the legal position may be reviewed. It would not, at any rate, be possible for Government to enforce the agreement by suing for the difference between the contract rate and the market rate in respect of the remaining stock.

Sd/- P.M.Lad
7/5/47
Remembrancer of Legal Affairs.

U.R. to Milk Commr., No. 4700 dated the 7th May 1947

Mjr/16/6
4 Cs.

Office of the R.L.A.

The view taken in R.C.D. office note at p. 17 ante is correct.

2. There is no agreement in writing, nor can any concluded agreement be spelt from correspondence. The agreement being void for want of compliance with the provisions of section 175(3) of the Government of India Act, 1935 the deposit will have to be returned to the contractor (see section 65 of the Indian Contract Act).

Sd/- P.M.Lad

O.C. 9-5

Remembrancer of Legal Affairs.

U.R. to R.C.D., No. 4769 dated the 9th May 1947

Mjr/16/6
4 Cs.

Office of the R.L.A.

Calim in respect of Shortages in Gur consignments.

R.L.A's Opinion No. 8326, dated 22-11-1946

The fact that admission of the claim for the total shortages exceeding five per cent. may give rise to similar claims against Government by other parties does not affect the legal position explained by the R.L.A. in his previous opinion. The Commissioner's endorsement No. W.A.R-397-K, dated the 27th January 1947, does not disclose any new point necessitating modification of the R.L.A's opinion No. 8326, dated the 22nd November 1946.

Sd/- P.K.Lad

o.c. 29/10

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 10452

dated the 31st October 1947

Mjr/16/6

4 Ce.

Office Of the R.L.A.

. for sale
)1 ase.

overnment of
ndia Act, 1935
and
ndian Contract
ct, 1872.

There being no agreement in the present case in accordance with the provisions of section 175(3) of the Government of India Act the Contractor can make no valid claim against Government in respect of either the short weight recorded or the low rate paid for 45,170 lbs. of grass.

Assuming that a valid agreement can be spelt from correspondence between the parties the question for consideration is whether the contractor's claim is valid. The original contract arising out of the acceptance of the Contractor's offer dated 26.2.1946 was not wholly fulfilled within the stipulated time and consequently that contract was in effect substituted by another contract the terms and conditions of which can be ascertained from the following correspondence. By his letter dated the 1st June 1946, the Liason Officer proposed the following terms to the Contractor:-

(1) Grass of good quality should be sent;

(2) Weighment should be made at the destination and the Contractor would be paid accordingly

The Contractor replied that the Inspector should be sent to inspect the weighment of grass at Sanand, which suggestion was not agreed to by the Liason Officer, whereafter the Contractor despatched grass from Sanand. It is therefore apparent that the weight recorded at destination is to be accepted as correct. The Contractor would not be entitled to be paid according to the alleged weight of bales at Sanand Unless he could show that the weight of bales recorded at destination is not correct. P.T.O.

Mjr/16/6

4 Cs.

In his letter dated 1.6.1946, the Liason Officer did not mention the rate of grass. Consequently, the rate of Rs. 28 per 1000 lbs. stipulated in the old agreement was impliedly agreed to by both agreement was impliedly dated 23.7.1946 the Liason Officer informed the contractor that he would be paid--

(a) Where rate realised in Bombay is less than Rs. 28, the actual price, but

(b) Where the rate realised in Bombay is more than Rs. 28, the agreed rate.

The Contractor raised no objection to the rate proposed and on 24-7-1946, he received full payment and deposited without protest. By his letter dated 7th November 1946, he has been claiming the difference in rate in respect of 45,170 lbs. of grass forwhich he was paid at the rate of Rs. 25. It is not alleged that Government realised a rate of more than Rs. 28 for this stock. The original rate of Rs. 28 was for grass of good quality. The fact that this stock could not be sold in Bombay at a rate higher than Rs. 28 is sufficient to prove its inferior quality. In the circumstance it appears that the Contractor has no valid claim against Government.

Sd/- P.M.Lad
10/10

O.C.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 2858, dated the 13th October 1947.

Mjr/16/6

4 Cs.

Office of the R.L.A.

It appears that by an agreement dated the 26th February 1946, executed between the District Magistrate, Surat and the V.P.B. Charcoal Association the latter agreed to supply 1300 wagons of charcoal before the end of December 1946. As it was found that the Association was supplying wet charcoal, the District Magistrate, Surat, issued a press not that 20 lbs. on account of wetness should be allowed for every 80 lbs of charcoal supplied to consumers as rebate, whereupon the Association stopped the supply alleging that by the issue of the press note the contract was terminated. Since the Association failed to fulfil the contract, on the advice of the Charcoal Committee the deposit of Rs. 5000/- was forfeited under condition 13 of the agreement. By a notice dated the 28th December 1946, the Association has called upon the D.M., Surat to return the deposit. The R.L.A. is requested to advise.

The agreement executed between the D.M., Surat and the V.P.B. Charcoal Association not being in conformity with the provisions of section 175(3) of the Government of India Act, 1935, is void. However, there appea s no objection to Government forfeiting the deposit under condition 13 of the agreement on the ground of non-fulfilment of the contract. The Association by its notice dated 11-8-46, claim d to be discharged from the contract by reason of the D.M.'s press note and by its notice dated 28-12-46, it has asserted that the contract could not be fulfilled as wagons were not made available. It is therefore apparent that the Association has taken up an inconsistent position. Consequently if the matter is taken to Court, it wouldbe possible to defend it on the ground that no claim based on a void agreement would be tenable and that the Association by failure to fulfil the contract had incurred the forfeiture of the deposit. However, the whole question can be reviewed if and when a suit is filled by the Association.

Sd/- P.M.Lad 29/8
Remembrancer of Legal Affairs

O.C.

U.R. to C.S.D. No. 8826,
dated the 30th August 1947.

Mjr/16/6
4 Js..

OFFICE OF THE R.L.A.

Under section 201 of the Indian Contract Act an agency is terminated by the principal revoking his authority or by the business of the agency being completed, Section 207 provides that revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively. Under section 208 the termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him or so far as regards third persons, before it becomes known to them. In the present case Mr. J.S.Patel, proprietor of J.J.& Co., appointed Messrs. Nagindas S. Kapadia and Maishadrai H. Joshi as his accredited represented representatives for the purpose of signing all documents so far as the business of charcoal was concerned. It is therefore apparent that the agency was for a limited purpose namely the signing of documents and does not include the settling of accounts with Government. Further, by his letter dated 15th February 1947 Mr. J.S.Patel has impliedly revoked his authority and Government is given notice of the termination of agency. Consequently Government will have to refund the balance of the deposit to Mr. J.S.Patel . However ex majore cautela an indemnity bond may be taken from Mr. J.S.Patel before refunding the amount to him ~~xx~~ (Section 204 of the Indian Contract Act will have no application to determining Government's liability to refund the deposit to the principal or the agent).

Sd/- P.K.Lad

O.C. 11/9

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 9154 dated 12th September 1947

Mjr/16/6

Office of the R.L.A.

It appears that the Kaira District Co-operative purchase and Sale Union, Nadiad, had paid Messrs. Motiram Raghoji and Sons, owners of Madhi Ginning Factory, Rs.16697-8-0 as price of 3379½ Mds. of Cotton seed at Rs.5 per md. and had stored the stock in a hired godown in the Factory. It is therefore clear that the contra t of sale was complete and the property in the goods had passed to the Karia District Co-operative Purchase and Sale Union, Nadiad. It appears that before the stock could be removed from t e godown, the District Magistrate, Surat, passed an order directing Messrs. Motiram Ragho i & Sons to dispose of that stock at the rate of Rs. 6 per md. It is not known under what provisions of law that order was passed by the District Magistrate, Surat. If it be merely an executive order. Messrs. Motiram Raghoji & Sons were not bound to obey it particularly when the property in the goods had already passed to the Kaira District Co-operative Purchase and Sale Union, Nadiad and would be liable in damages for tort, namely, wrongful conversion ; but if, on the other hand, the District Magistrate's order had any legal sancti n, Messrs. Motiram Raghoji & Sons would be liable to pay the price Kaira District Co-operative Purchase and Sale Union, Nadiad, the price realised by sale after deducting therefrom the actual expenses incurred. It is therefore apparent that in any event the Kaira District Co-Operative Purchase and Sale Union, Nadiad, has a valid claim and if it be driven to a Court of law for relief, in all probability Government or the District Magistrate or both would be joined as co-defendants. In the circumstances this appears to be a fit case for amicable settlement and it is desir ble that Government should try to settle the dispute.

Sd/- D.V.Vyas

O.C.

Remembrancer of Legal Affairs.

U.O. to C.S.D. 7941
dated the 1st August 1947.

Mjr/16/6.

4 Cs.

Office of the R.L.A.

The important facts are few and are restated below for convenience:-

The Gur Controller for India allotted 20000 tons of gur ex Kolhapur to the Bombay Province for the year 1946-47 beginning from November1946. The Government of Bombay appointed a Special Officer designated as the Gur purchasing officer who was entrusted with the work of purchasing the gur at Kolhapur. Subsequently it was also decided that the work of transporting the gur purchased at Kolhapur to Bom ay should not be done departmentally but shouldbe entrusted to other agencies. Pursuant to this decision, the firms of Messrs. Himatlal Chunilal and Messrs. Anantary Propatlal were appointed as Gur Despatching Agents for Government, the former for 14000 tons and the latter for 600 tons of gur purchased at Kolhapur by the Gur Purchasing Officer. On 1st February 1947, both the firms entered into separate agreements with Government. The preamble to these agreements is as under:-

> "Whereas the Government of Bombay is purchasing gur from Kolhapur State on Government account and whereas the said Himatlal Chunilal Patel have agreed to act as Government's Despatching, Clearing and forwarding agents at Kolhapur for the gur from time to time to be purchased to the extent of 14000 tons; Now it is hereby agreed by and between theparties hereto as follows:-"

The follows the operative portion of the contract clause 1 of which is as under:-

> "The despatching agents shall work under the general supervision and direction of the Gur Purchasing Officer of Government of Bombay at Kolhapur and arrange for weighing over, taking delivery of the gur stocks purchased by the Gur Purchasing Officer for Government and to cover the Rawas with hessions, strings etc. according to the procedure stipulated below, transport the gur to the Railway stations or the Agents' Godowsn as the case may be and book the gur by railway wagons or other means of transport as may be specified by the Gur Purchasing Officer to the Director of Civil Supplies, Bombay or ~~for~~ other cosignee. The agent will be responsible for providing all labour, transport, materials and godown accommodation necessary for the above work and the rate of commission shall cover all charges".

The Second clause appears to be an amplification of the first and gives details of the work which the despatching agents were expected to do and for hich they were to be remunerated by their commission. Clauses 3 to 7 are not material for the purposes of this reference. The penultimate clause provides that in the event of any doubt or dispute arising out of this agreement or the interpretation of the terms thereof the decision of the Director of Civil Supplies shall be final and binding on both the parties. The concluding paragraph provides for the duration of the agreement which is for a period of six months subject to earlier termination thereof by Government inter alia for any reason whatever which Government might think adequate, by a writen notice of 15 days delivered to the agents. Curiously, the agreements are silent as to the rate or amount of commission which Government had to pay to the agents for the work of despatching gur. This omission however does not create any serious difficulty because in the event of agents fulfilling their contract the parties would have been able under lead evidence to prove the rate or amount of commission agreed upon.

The Gur Purchasing Officer was however unable to fulfill his mission of purchasing gur at Kolhapur at conttolled rates owing to difficulties created by the Shahupuri Gur Merchants Association, Kolhapur, which, it was alleged, had the support of the State authorities. Since the gur could not be purchased, the agreements with the despatching agents became useless and were terminated on 22nd March 1947, in accordance with the concluding paragraph by a written notice dated the 8th March 1947.

The firm of Messrs. Himatlal Chunilal have now made a demand for payment of Rs. 51500 from Government on account of liability incurred by them for hiring of godowns, purchase of packing material and office equipment, salary of staff etc. for executing the despatch of 14000 tons of

gur, Similarly, Messrs. Anantray Poaptlal claim Rs, 40500 which includes Rs. 253,2-8-0 as incidental charges for g.down rent, travelling expenses, office rent, salary of staff etc.,the balance being the loss of calculated profits. (Please see the penultimate paragraph of their letter of 1st March 1947). In other words, the agents claim to be indemnified against the losses, liabilities and disbursements incurred by themin the purported exercise of their authority.

The question whether Government are under any liability to indemnify the agents for the liabilities incurred by the latter will in a large measure depend upon the true constructionof their agreements. The agreements do not contain any express promise of indemnity by Government. Nevertheless, every agent has a right against his principal, founded upon an implied contract, to be indemnified against all losses and liabilities and to be reimbursed all expenses incurred by him in the execution of his authority (Bowstead: Law of Agency, 9th editinn, 1. 162). If a principal employs and agent to do something the liability at his own expense. (Read v. Anderson (1884) 13 Q.B.D. 779-783). On the same principle, if an agent has, without his own default, incurred losses or damages in the course of transacting the business of his agency or infollowing the instructions of his principal, he will be entitled to full compensation therefor. But it is not every loss or damage for which the agent will be entitled to re-imbursement from his principal. The latter is liable only for such loss s and damag s as are direct and immediate, and natuarally flow from theexecutionof the agency. (Duncan v. Hill (1873) L.R. 8 Ex. 242 cited by Pollock and Mulla: Contract Act 7th edition at pp 5,2-8). In Indian Law, these principles have been given statutory expression in sections 204 and 222 of the Indian Contract Act, 1872. Under the former section, a principal cannot revoke the

P.T.O.

...rity given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency. Section 222 enacts that the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him. Briefly stated, the rule is that an agent's right to indemnity against his principal extends to such losses, liabilities and disbursement as were incurred or made by him in exercise of the authority conferred upon him, and, as held in Duncan v. Hill, in the course of trahsacting the business of the agency. Bearing these principles in mind, we may examine the agreements to see whether the agents have any legal claim against Government for the liabilities and expenses alleged to have been incurred by them.

The preamble to the agreements shews that the agents had agreed to act as Government's despatching, clearing and forwarding agents at Kolhapur for the gur purchased by the Government officer to the extent of 14000 tons and 6000 tons respectively. The agent's duty was to despatch to Bombay such quantities of gur not exceeding a prescribed maximum as were given to them by the Gur Purchasing Officer for transporting to Bombay. Clause 1 and 2 further provide that the agents would be responsible for all costs and other incidental charges, the liability of Govern ent being limited to the commission which was inclusive of all costs and liabilities incurred by them. But we do not find anything in the contract to suggest that Government were under any liability to purchase the maximum or any quantity of gur and entrust it to the agents for despatching it to Bombay. The contract was not that the principal shall purchase and the agents shall transport the gur so purchased from Bombay but that if and when Government did purchase the gur at Kolhapur, the agents were liable to transport it to Bombay and entitled to earn the commission on the quantities so transported. Consequently, their

authority to act as agents would have arisen only after were entrusted with any quantity for transporting to Bombay but not before. It also follows from the preamble read with clauses 1 and 2 of the agreement that Government were not bound to purchase the maximum quantity of gur prescribed in the agreement. The agents were liable to despatch any quantity of gur not exceeding the maximum. A priori, if their costs exceeded the commission earned by them on the quantities given to them for transport, the agents couldnot have claimed the difference from Government because by agreement, the Government were not bound to pay to agents anything more than the commission.

Now the claim which the agents make against Government is in respect of the expenses incurred by them before any gur could be purchased and given to them by the Gur Purchasing Officer for despatch to Bombay. These expenses which they incurred obviously in anticipation of receiving the stated quantities of gur for despatch to Bombay cannot be said to have been incurred in exercise of the authority conferred upon them as agents or in the course of transacting the business of the agency. The business of the agency was to despatch to Bombay such quantities of gur not exceeding the prescribed maximum as wer given to them by the Gur Purchasing Officer, and at the stage only they could exercise their authority as agents. Under the agreements, Government's liability is for the payment of commission only on the quantities of gur despatched by the agents. Since the commission is invlusive of all incidental charges the agents cannot claim from Government any indemnity for the disbursements made by them beforethy could have done any acts which would entitle them to receive their commission. If, for instance, the Gurpurchasing Officer had purchased, say, a thousand tons of gur and if after its having been handed over to the agents but before the agents could have it despatched to Bombay, their agency had been terminated, the agents would have been entitled to be indemnified for such l.. losses and liabilities incurred by the

in the course of their business. That contingency did not arise and consequently, having regard to the peculiar facts of this case, and upon a true construction of the agreements the agents have no legal claim of indemnity against Government. A fortiori, they are also not entitled to claim any damages for wrongful termination of the agency.

c It is nevertheless for consideration whether Government should not make, on moral grounds, some compensation ex gratia for such costs and liabilities as the agents, under a mistaken notion of the legal position, bona fide incurred in anticipation of earning their commission. The correspondence goes to show that they were experiencing great difficulty in obtaining storage and office accommodation at Kolhapur. These and other steps such as purchasing of packing materials, engagement of labour etc. for transporting such vast quantities to Bombay had of necessity to be taken in advance. They could notbe deferred till the last munute when the stocks were actually pruchased and ready for transport. Subject to satisfactory proof of the various disbursements, it is for Government to decide whether the agents should be paid any compensation ex gratia for the expenses bona fide incurred by them.

Sd/- D.V.Vyas

o.c.

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 7829

dated the 29th July 1947.

Mjr/16/6

4 Cs.

No. 9031

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 5th September 1947

To

The Commander,
H.Q. Bombay Area,
Colaba, Bombay 5.

Subject:- Calim for compensation from contractor Mr. Z.Y.Khatib for loss of live goats and sheep during his contract at Poona from 1st April 1946 to 30th September 1946.

Sir,

With reference to your letter No. 1110/2/16/St5Q dated the 2nd June 1947 on the subject noted above, I have the honour to observe as follows:-

Under clause 11 of the Tender the contractor is bound to pay rent for the use and occupation of any military land. Clause 29 of the specifications and conditions provides for the responsibility of the contractor to keep in thorough repair all Kacha troughs used by his animals and to keep clean and sweep butchery buildings and premises and under clause 30 he is liable for payment of rent. It is apparent that the contrant does not provide for Government's liability to provide shelter for the contractor's animals during monsoon nor does it require Government to repair the pens. Consequently the contractor would not be entitled to claim compensation from Government for the loss of his animals for want of shelter or failure to keep the pens in repair.

The papers sent with your letter No. 1110/2/St5Q dated the 11th July 1947 are returned herewith.

Your obedient Servant,

o.c. Sd/- P.M.Lad

Remembrancer of Legal Affairs.

Mjr/16/6

4 Cs.

No. 8383
Office of Legal Affairs,
Remembrancer of Legal Affairs,

Bombay Castle, 14th August 1847.

To

The Major-General,
Commander, Bombay Area,

Subject:- Supply of meat fresh at Bombay /Kalyan.

Sir,

With reference to your letter No. 102431-ST5Q, dated the 28th July 1947, on the above subject, I have the honour to forward herewith my opinion on the case.

Your obedient servant,

o.c. Sd/- D.V.Vyas
Remembrancer of Legal Affairs.

Mjr/16/6
4 Cs.

Office of the R.L.A.

Under section 175(3) of the Government of India Act, 1935 all contracts with Government are required to be in writing; and where the terms of a contract are reduced to writing the court can look at the writing alone in order to construe what the terms of the contract were and parol evidence as to what transpired antecedent to the contract or what parties did subsequent to the contract cannot be admitted to ascertain what the terms of the contract between the parties were (see Dinkarrai V. Sukhadayal, 48 B.L.R 821). In the present case, the terms of the contract are reduced to writing and according to the contractors Haji Tar Ahmed & Sons are required to supply 160,000 lbs. of "Halal Dressed Meat". The fact that the total quan tity to be supplied as shown in the comprative statement of tenders was 260,000 lbs. and the security deposit was taken from the contractors on that basis, but by mistake the quantity to be supplied was stated in the agreement as 160,000 lbs. instead of 260,000 lbs. cannot be pleaded by Government to vary the terms of the contract. Consequently the contractors would not be liable to supply more than 160,000 lbs. of meat. The contractors have already supplied about 25% more than the quantity contracted for without asking for higher rates althoug strictly speaking they could have either refused to supply the excess quantity or demanded higher rates, In the circumstances, the Military Authorities would not be justified in requiring the contractors to supply at the stipulated rates the balance to make up the total quantity of 260,000 lbs. of mutton

Sd/- D.V.Vyas

O.C.

Remembrancer of Legal Affairs.

Mjr/16/6

4Cs.

Office of the R.L.A.

Liability to construct Road

The agreements between Government and the purchasers of developed plots are silent on the point of constructionof roads. It appears that the rate Rs. 3/- per sq. yd. at which these developed plots were sold included the cost of the construction of the roads by Government. In the case of sale of undeveloped plots an express conditionis inserted in the offer form that the cost of constructions to be borne by the purchasers. It follows therefore that an implied condition couldbe spelt from this that in the case of sale of developed plots, Government has undertaken the liability to construct the roads. Consequently notwithstanding the absence of any express conditionin the offers for the sale of developed plots, that Government would be liable to bear the cost of construction of the road, such liability could be implied.

Sd/- P.M.Lad
19/12

O.C. Remembrancer of Legal Affairs.

U.R. to R.D., No. 13186, dated the 20th December 1947

Mjr/16/6

4 Cs.

Office of the R.L.A.

Security of Charcoal for fresh advance.

T There is no legal objection to the new Charcoal being taken as security for the old outstandings as well as the fresh advance. No special provisions appear to be necessary in the agreement for that purpose except that the agreement shouldcover theaggregate amount of both the loans and that the date of repayment shouldbe a specific date without any reference to the date or dates on which the advances were granted.

A clause is added for the 'accelerationof the due date in the event of certain contingencies as suggested by the Advocate General in his opinion dated 19-12-1946.

The draft agreement and the draft surety bond which will meet all the requirements of the case are appended.

It seems necessary to impress upon the Officers concerned that no provisions in the agreement will be themselves be of any help against a transferee for value without notice unless Government retains possession of the security and further that if Government loses or without the consent of the sureties parts with the security or any part thereof, under the provisions of section 141 of the Indian Contract Act, it may also have the effect of discharging the sureties to the extent of the value of the security so lost or parted with .

Sd/- P.M.Lad
28-10-47

O.C. Remembrancer f Legal Affairs.

U.R. t C.S.D. No. 10392

dated the 30th October 1947

Rjr/16/6

4 Cs.

Office of the R.L.A.

Under the terms of the bond executed by him, Mr. Karanjkar is liable to account for all moneys, papers and other property which shall come into his hand by reason of his holding the office of Purchase Inspector. He is therefore liable to Govern ment for the value of the shirinkage in food grains in excess of the reasonable and permissible limits fixed by Governmet. Mr. Karanjkar appears to have admitted the fact that there were such shrinkages. He will therefore have to prove that the loss was due to reasons beyond his control and not due to his carelessness or negligence.

2. The loss will habe to be recovered by filing a civil suit against Mr. Karanjkar and his sureties.

Sd/- P.N.Lad
30/12

o.c.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 13548, dated the
31st December 1947

Mjr/16/6
4 Cs,